

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 8**

CARGILL, INCORPORATED

Employer

and

SCOTT F. BERENDT, AN INDIVIDUAL

8-RD-1948

Petitioner

**INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, LOCAL 436, AFL-CIO**

Union

**ORDER SETTING ASIDE ELECTION
AND
DIRECTION OF SECOND ELECTION**

Pursuant to a Stipulated Election Agreement approved by me on March 24, 2003, and election was conducted on April 10, 2003, in the following described unit:

All full-time and regular part-time production and maintenance employees, but excluding all office clerical employees, professional employees, guards and supervisors as defined in the Act.

Upon conclusion of the balloting, the parties were furnished a Tally of Ballots which showed that of approximately one hundred twenty-eight (128) eligible voters, one hundred twenty-two (122) cast ballots of which sixty-three (63) were cast for, and fifty-eight (58) against, the Union. There was one (1) void ballot and no challenged ballots.

On April 11, 2003, the Petitioner timely filed objections to conduct affecting the outcome of the election, duly serving a copy thereof upon the Employer and the Union.

Pursuant to the provisions of Section 102.69 of the Rules and Regulations of the Board, an investigation of the objections was initiated, during which the parties executed a Stipulation in which they waive their right to the issuance by me of a Report on Objections and to a hearing on said objections, and further agree that I may issue an Order Setting Aside the Election and directing that a new election be held. The Stipulation also contains the arrangements for the new election.

In view of the foregoing and inasmuch as I have approved the Stipulation of the parties,

IT IS HEREBY ORDERED that the election in this matter be, and it hereby is, set aside and that a second election be conducted in accordance with the Parties' Stipulation.

DIRECTION OF SECOND ELECTION

A second election by secret ballot will be conducted under my supervision as Regional Director among the employees in the unit found appropriate at the time, date and place set forth in the Parties' Stipulation and in the Notice of Second Election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending March 16, 2003, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also

eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced.¹ Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by **International Brotherhood of Teamsters, Local Union No. 436.**

Dated at Cleveland, Ohio this 18th day of April, 2003.

/s/ Frederick J. Calatrello
Frederick Calatrello
Regional Director
National Labor Relations Board
Region 8

¹ In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236; *NLRB v. Wyman-Gordon Company*, 394 US 759. Accordingly, it is hereby directed that an election eligibility list, containing the names and addresses of all eligible voters must be filed by the Employer with me as the Regional Director within seven days of this Order Setting Aside Election and Direction of Second Election. Since I shall make the list available to all other parties to the Second Election, it is requested that the Employer furnish a total of three copies. To speed preliminary checking and the voting process itself, the list should be alphabetized and contain only the names and addresses of eligible voters who were employed during the payroll period ending March 16, 2003. In order to be timely filed, such list must be received in the Regional Office, 1240 E. 9th Street, Room 1695, Cleveland, Ohio 44199, on or before March 25, 2003. No extension of time to file the list will be granted except in extraordinary circumstances. Failure to comply with this requirement shall be ground for setting aside the election whenever proper objections are filed.